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AUG 15 2003

OFFICE OF PETITIONS

~~In re Application of
Lorenzo Torres
Application No. 09/885,563
Filed: June 19, 2001
Attorney Docket No. NMTECH9~~

DECISION GRANTING
PETITION

In re Application of
Lorenzo Torres
Application No. 10/042,757
Filed: September 20, 2002
For: Method of Providing an Essential
Oil Extract of Capsicum and the
Extract

This is a decision on petition under 37 CFR § 1.53(e), filed June 23, 2003, requesting that an improper Continued Prosecution Application (CPA) under 37 CFR § 1.53(d) be treated as an application under 37 CFR § 1.53(b) and be accorded a filing date of September 20, 2002.

On August 20, 2002, a Notice of Allowance and Issue Fee Due and a Notice of Allowability were mailed in application No. 09/885,563, which set a three (3) month statutory period for reply. In response, on September 9, 2002, applicant paid the issue fee and publication fee. On September 20, 2002, applicant submitted a

request for a CPA under 37 CFR § 1.53(d) based on prior application No. 09/885,563 and paid the statutory basic filing fee of \$370.00. However, CPA practice no longer applies to applications, other than design applications, if the prior application was filed on or after May 29, 2000. Accordingly, the CPA request was improper because the prior application was filed on or after May 29, 2000.

In the event that an applicant files a request for a CPA of a utility or plant application that was filed on or after May 29, 2000 (to which CPA practice no longer applies), the Office will automatically treat the improper CPA as a request for continued examination of the prior application (identified in the request for CPA) under new 37 CFR § 1.114.

On October 15, 2002, prior application No. 09/885,563, issued as U.S. Patent No. 6,465,022. Thereafter, on June 23, 2003, applicant filed the present petition under 37 CFR § 1.53(e) by facsimile transmission. Applicant indicated that the divisional application filed on September 20, 2002, was inadvertently submitted under 37 CFR § 1.53(d). Applicant requested that the improper CPA be converted to an application under 37 CFR § 1.53(b).

The petition is granted.

The application under 37 CFR § 1.53(b) has been assigned application No. 10/042,757. The CPA request, a preliminary amendment, and the copy of the application papers as originally filed have been removed from the file of application No. 09/885,563 and have been placed in application No. 10/042,757. A copy of the CPA request and a copy of the present petition will be retained in application No. 09/885,563 to complete the record therein.

All further correspondence concerning the application under 37 CFR § 1.53(b) should be directed to application No. 10/042,757 not application No. 09/885,563.

The Office finance records will be corrected to show that applicant paid the \$370.00 basic filing fee in application No. 10/042,757, not in application No. 09/885,563. The \$130.00 petition fee will be charged in application No. 10/042,757 to counsel's Deposit Account, No. 02-1653.

Applicant is advised that 37 CFR § 1.78 requires that any nonprovisional application claiming benefit of one or more prior-filed copending nonprovisional applications contain or be amended to contain a reference to each such prior-filed application, identifying it by application number and indicating the relationship of the applications (i.e., continuation, divisional, or continuation-in-part). This reference must be included in an application data sheet (37 CFR § 1.76) or the specification must contain or be amended to contain such reference in the first sentence following the title. See 37 CFR § 1.78(a)(2). Accordingly, a preliminary amendment to the specification to add the required reference, in compliance with 37 CFR § 1.121, or an application data sheet including the required reference should be promptly filed.

Application No. 09/885,563 will be forwarded to Files Repository.

Application No. 10/042,757 will be forwarded to the Office of Initial Patent Examination for processing as a divisional application of application No. 09/885,563 filed under 37 CFR § 1.53(b), not under 37 CFR § 1.53(d), with a filing date of September 20, 2002, using the copy of the original application papers submitted on that date.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Christina Tartera Donnell at (703) 306-5589.



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for Patent Examination Policy

CTD